

(2004) 12 MAD CK 0118
In the Madras High Court
Case No : S.A. No. 333 of 1994

D. Ganesa Gurukkal and Others

APPELLANT

Vs

Sri Dharbaranyeswaraswamy Devasthanam Thirunallar

RESPONDENT

Date of Decision : 14-12-2004

Acts Referred:

Evidence Act, 1872 — Section 13

Pondicherry Hindu Religious Institutions Act, 1972 — Section 20, 30

Specific Relief Act, 1963 — Section 34

Citation : (2005) 1 CTC 420 : (2005) 2 LW 232 : (2005) 1 MLJ 370

Hon'ble Judges : M. Thanikachalam, J

Bench : Single Bench

Advocate : T.T. Ravichandran, for Satish Parasaram, for the Appellant; Srinath Sridevan, for the Respondent

Judgement

M. Thanikachalam, J.—The Plaintiffs, before the Courts below, having filed the suit for certain reliefs, failed in their efforts concurrently and the result is the Second Appeal.

2. The plaintiffs who are functioning as Archakas in the defendant/respondent Temple, have filed the suit for declaration, that they are entitled to half share in the fees levied by the Temple, for any form of worship, service, ritual ceremony rendered in the Institution for the benefit of the worshipers, after deducting the expenses, with the consequential relief of a mandatory injunction, directing the Management of the defendant, Temple to fix the share of the plaintiffs at 50% of the total fee levied, on the grounds that their predecessors interest have been officiating as hereditary "Pooja Sthanikamadars" and "Archakas" from time immemorial which was inherited by them, being the lineal descent, that the right of the plaintiffs as Archakas and Sthanikamadars of the renowned Temple is a hereditary right which cannot be curtailed by the defendant, by taking any action which would amount to violation of the property right, that the Board of Trustees of the defendant Temple though initiated some proceedings by way of resolution, originally, the same was dropped and thereafter in 1970 they have introduced

ticket system for certain kind of poojas which was questioned in O.S. No. 21 of 1970 on the file of Sub-Court, Karaikal, which was dismissed, not adjudicating the dispute between the plaintiffs and temple fully, that the introduction of the Pondicherry Hindu Religious Institutions Act, which came into force in 1975 cannot have any effect eradicating the hereditary Trusteeship, which is safeguarded under the Act, also and that the plaintiffs being non-salaried Archakas, their claim of sharing the net income on equal basis is just and proper.

3. The respondent/defendant temple questioned the rights claimed by the plaintiffs, stating that the plaintiffs are not the hereditary Archakas or hereditary pooja Sthanikamadars, that they are mere functionaries in the service of the temple subject to its disciplinary control, that the same kind of relief was already claimed, negated and therefore, the suit is barred by res judicata, that every Archakar in the service of the temple Devasthanam is only part-time, casual and temporary nature, who is not at all entitled to claim equal share in the income, that the alleged right claimed by the plaintiffs cannot be described as property right and it is only a mere post, that the plaintiffs having already filed a suit for declaration of their hereditary right, failing the same, they ought to have prayed for in this suit, for declaration of their right and in the absence of such declaration, the suit is not maintainable, that the Court has no jurisdiction and that the Board of Trustees have powers, right to determine such rates and charges for each kind of ticket and to determine the rate and charges, payable there from to the Archakas which cannot be questioned by the plaintiffs, who are all employed for specific purpose, not having any other right as incorrectly claimed.

4. On the basis of the pleadings, the trial Court had framed as many as six issues, reflecting the case and counter. The learned Trial Judge, after evaluating the materials placed before him, came to the conclusion that the present suit is not barred by res judicata, that the plaintiffs have miserably failed to prove their status as hereditary Archakas or hereditary Sthanikamadars and that they are entitled to payment as "Gurukkal" for the service rendered by them, subject to other disciplinary action also and therefore, the plaintiffs are not entitled to any relief in the suit.

5. The plaintiffs, aggrieved by the decree and judgment of the trial Court in O.S. No. 136 of 1986 on the file of the Principal District Munsiff, Karaikal, challenged the same before the Additional District Judge, Pondicherry at Karaikkal in A.S. No. 52 of 1991, on various grounds.

6. The learned Additional District Judge in his reasoned judgment took the view that the custom and usage pleaded by the plaintiffs are not supported by any materials, that too in the absence of pleadings about the hereditary right and how that right had descended upon the plaintiffs, tracing out the succession, that the custom and usage which are required to be proved as per Section 13 of the Evidence Act has not been discharged, that the savings clause u/s 30 of the Pondicherry Hindu Religious Institutions Act, 1972, cannot be taken as

protection, by the plaintiffs, since their contention of hereditary Archakas or Sthanikamadars are not at all proved, whereas the management of the defendant Devasthanam is entitled to regulate the fees u/s 20 of the above said Act. Thus concluding, unable to take different view, as far as the dismissal of the suit is concerned, confirmed the result which is under challenge in this appeal.

7. This Court while admitting the second appeal had formulated the substantial question of law which reads as follows:

" Whether, when the origin of the temple is lost in antiquity and de facto functions and rights of the archakas were confined to the families of the plaintiffs-appellants, the Courts below are right in holding that they are not entitled to the benefits of exclusion u/s 30(a) of the Hindu Religious Institutions Act, 1972?"

reserving the right to hear the appeal, on any other question of law also, if raised during the hearings. Such liberty was not exercised, since, no other substantial question of law has been raised before me.

8. Heard the learned counsel for the appellants, Mr. T.T. Ravichandran for Mr. Satish Parasaran and the learned counsel for the respondent Mr. Srinath Sridevan.

9. Mr. T.T. Ravichandran, learned counsel appearing for the appellants, submitted that the right claimed by the plaintiffs, by custom in the defendant Religious Institution, which is established in this case, by usage is well protected u/s 30 of the Pondicherry Hindu Religious Institutions Act, 1972, (hereinafter called the Act) and therefore, by invoking u/s 20 of the Act, the Board has no power to infringe the right of the plaintiffs, which they are entitled as hereditary right, being the Archakas and Sthanikamadars. It is the further submission of the learned counsel that this right was established by sufficient evidence, as well as by the conduct of the defendant Devasthanam, in recognising the rights of the plaintiffs, which was not properly considered and decided by the Courts below, which should be set aside, thereby declaring the rights of the plaintiffs.

10. Mr. Srinath Sridevan, learned counsel appearing for Devasthanam submitted that even as per the evidence available on record, some of the plaintiffs are not the male lineal descendant of the original Archakas and therefore, all the plaintiffs cannot join together and file the suit for the relief claimed, that too in the absence of invoking the provisions under Order 1, Rule 10 of CPC, that the suit filed for declaration of their alleged right in respect of half share in the fees, without a prayer for declaration of their rights as hereditary archakas and sthanikamadars, is not at all maintainable, that the so called custom and usage pleaded by the plaintiffs are not at all proved as mandated under law and as decided by the judicial precedent and that the Management of the Temple is entitled to determine what portion if any of the fee collected, shall be paid to the archakas for the purpose of any service, ritual or ceremony in the Institution, which cannot be questioned by the plaintiffs, in the Civil Court and that both the Courts below have considered these aspects, negated the claim of the plaintiffs, on legal basis, which cannot be disturbed by this Court. Thus, supporting the

reasons assigned by the Courts below, Mr. Srinath Sridevan, submitted that the appeal is devoid of merits and liable to be dismissed.

11. It is not in dispute, that the provision of the above said Act is applicable to this Temple, though this Temple has been in the administration of Shri Dharmapuram Adheenam, for several centuries; the Temple was under the control and the Management of Dharmapuram Adheenam till the passing of the Pondicherry Hindu Religious Institutions Act, 1972 which came into force on 1.7.1975. Under this Act, this Temple was brought under the Religious Institutions, covered under the Act, and the same at present, managed and controlled by the Special Officer who is functioning as Executive Officer, for the Temple. It is also not in dispute, that the plaintiffs/gurukkals are functioning in this Temple as Gurukkals or Archakas as the case may be, rendering their service, to the visiting worshipers, in performing Archanas, Poojs, Servai, etc. Even in the written statement, it is stated that every Archakar who is in the service of the temple Devasthanam, as part-time, casual and temporary nature and in this way, their right to share the income to a certain extent, which could be regulated u/s 20 of the Act is also not in dispute. The plaintiffs not satisfied with the remuneration, now they are receiving as share from the income of the temple or "kanikkai" or "thattu kasu" offered by the worshipers, wanted to have more share in the temple income and to achieve the same, they thought of claiming the "hereditary archakas right" or hereditary sthanikamadars right on which basis, they have claimed equal share in the net income of the Temple, not accepted by the Courts below.

12. Section 20 of the Act gives powers to the Board to fix fees for performance of service in the temple which reads as follows:

"The Board shall have power, subject to such conditions as the Government may, by general or special order, direct to fix fees for the performance of any service, ritual or ceremony in the institution and to determine what portion, if any, of such fees shall be paid to the archakas or other office holders or servants of such institution."

Thus under the Act, its validity is not in question, the management of the temple, namely, the Board has every right to fix the share, taking into account the services rendered by the archakas, further taking into consideration, the maintenance of the temple, for which, inner staff are required. In this way alone, it seems, the Board has passed a resolution, as pleaded in the written statement, fixing fees for various poojs and archanas and fixing the share, payable to the archakas also and not as claimed by the plaintiffs, fixing the share of 50%. This right, u/s 20 conferred upon the Board, to manage the temple is not disputed.

13. The main submission of the learned counsel for the plaintiffs, was that the plaintiffs are the hereditary trustees and their right is protected u/s 30 of the Act. u/s 30 of the Act, the savings clause reads as follows:

" Save as otherwise expressly provided in this Act or the rules made thereunder,

nothing in this Act shall -

(a) affect the honour, emolument or perquisite to which any person is entitled by custom in any religious institution or its established usage in regard to any other matter; or

(b) authorise any interference with the religious or spiritual functions in any institution."

Thus, it is seen, that Clause (a) of Section 30, provides protection to certain kind of persons, regarding certain rights, which they are entitled, by custom or its established usage. Therefore, unless the custom or the established usage as the case may be are established and proved, as available from time immemorial, having no snape thereby vesting the right in favour of the persons who claim, such protections are not available. The law was administered previously, more or less on the basis of tradition, custom without much codification of any laws. Even, when the laws were codified, to regulate the rights of the parties, as well as to safeguard an orderly society, the legislatures thought of certain kind of rights, which were recognised and inherited by the parties and vested in them such as Custom and Usage, which should be preserved despite codification of laws. In this way alone, while the Act was enacted, to regulate and control the management of the Temple, Section 30 was enacted, protecting certain kind of right, which were enjoyed by certain kind of people which they could claim, under custom or on the basis of the established usage. Section 13 of the Indian Evidence Act gives guidance, as to, how the right or custom has to be claimed and what are all the facts relevant to make out the same. u/s 13(b) of the Indian Evidence Act, when the question of any right or custom is claimed, certain instances on which the right or custom claimed, asserted or departed are relevant factors to be considered. Therefore, a person cannot claim custom or usage, merely declaring by himself, that he is entitled to custom and usage that too in respect of a religious institution, unless he pleads certain instances which are relevant, to prove the same. Generally, hereditary Archakas right could be made available mainly, on lineal descendant of the original archakas, that too when such person claims the hereditary right, he should have the qualification to do the pooja also, since it is not an ordinary work, which could be attended by any person. Here, as admitted by P.W.I and as pointed by the Courts below, some of the plaintiffs, are not the male lineal descendant of the original archagas. As rightly submitted by the defendant/respondent, the suit is not filed in the representative capacity also. In the plaint also, I find no genealogy, tracing the predecessors in interest and their male descendants. Considering this aspect which is a question of fact, both the Courts below have concluded that the plaintiffs are not the male descendant of the original archakas and in this view, their claim for hereditary archakas or sthanikamadars is not available to them, is based on legal evidence, not coming within the meaning of "perverse finding", thereby requiring affirmation and not disturbance by this Court.

14. The Division Bench of this Court in Pl. Pn. Subramanian Chettiar Vs. P.L.P.N.

Kumarappa Chettiar and Others, has ruled, the essentials of valid custom and how the burden is to be decided, placing reliance upon the previous rulings also. It says:

"A custom is a rule which in a particular family or in a particular district, has from long usage obtained the force of law. It must be ancient, certain and reasonable, and being in derogation of the general rules of law, must be construed strictly."

It is also further observed that:

"It is further essential that it should be established to be so by clear and unambiguous evidence, for it is only by means of such evidence that the Courts can be assured of its existence and of the fact that it possesses the conditions of antiquity and certainty on which alone its legal title to recognition depends. It must not be opposed to morality or public policy it must not be expressly forbidden by the legislature."

In this case, the plaintiffs, who have claimed hereditary archakas on the basis of custom and usage, have failed to prove the same, by establishing the above said requirements, as pointed out by the Courts below, which requires confirmation, since the findings are based on evidence, being a question of fact.

15. In Sri Adi Visheshwara of Kashi Vishwanath Temple, Varanasi and Others Vs. State of U.P. and Others, , the Supreme Court had the occasion to consider the claim of Shaivites i.e. their exclusive right to worship and to manage the temple including the right to receive offerings given by the pilgrims to Lord Shiva, to perform pooja and ceremonies in accordance with prevailing customs and usage in the Temple handed down from centuries, has held:

"When the service on customary basis is abolished, concomitantly right to receive offerings given by the pilgrims stands extinguished and prohibited and is vested in the Deity, Lord Shiva. It is not an acquisition of their right but it has only incidental and consequential effect. Equally, it is not a vested right in the individual panda/archaka/priest dehors the service...."

thereby concluding that right to share is only, when the service is on customary basis. Since in the case on hand, the plaintiffs claim, right to share the income of the Temple on equal moiety, as of right, which may be made available only when the claim of service is on customary basis is proved, establishing the custom, usage, from time immemorial preceded by pleadings, followed by unquestionable evidence, since the rights claimed by the plaintiffs are derogatory to the Act. Though the plaintiffs have claimed such rights, has not been made out, as per the findings recorded by the learned Additional District Judge, which is a question of fact, reaching finality.

16. In Shri Jagannath Temple Puri Management Committee and Another Vs. Chintamani Khuntia and Others, , while considering the effect of Shri Jagannath Temple Act, 1954 and its validity as well as whether it affected the services rendered by the sevaks, their Lordships of Supreme Court, referring the decision

in Seshammal and Others, Vs. State of Tamil Nadu, affirmed that the choice of trustee in the matter of appointment of an Archaka, is no longer limited by the operation of the rule of next-in-line of succession in temples, where the usage was to appoint the Archaka on the hereditary principle. The trustee is not bound to make the appointment, on the sole ground that the candidate is the next-in-line of succession to the last holder of office, thereby even recognising deviation where the usage are recognised. This being the position, the plaintiffs, who have not at all made out the case of hereditary Archakas, or that they are next-in-line of succession, in the defendant temple, where the usage was available, they are not entitled to inherit the Archakas post, and certainly, they cannot claim equal share, also seeking protection u/s 30 of the Act.

17. The Hon"ble Supreme Court in A.S. Narayana Deekshitulu Vs. State of Andhra Pradesh and Others, has ruled, regulation of the service condition is a sequence to the abolition of hereditary right of succession of the office of an archaka and the said archaka is subject to the disciplinary power of a trustee or an appropriate authority prescribed in the regulations or rules of the act, thereby showing, the so called archakas are not entitled to claim equal right in the income and they are above the disciplinary proceedings of the Temple Management. In the light of the above legal position, if the effect of Section 20 is considered, then, the right exercised by the defendant/Management, cannot be questioned at all, in view of the further fact that the plaintiffs have not at all made out a case of custom or usage as required under law.

18. The fact that elsewhere from 1970, the plaintiffs have been given some share, in the income of the defendant/temple, such as tariff from sale of tickets, certainly would not confer any hereditary right, making them to claim right of share, at 50% and if at all that the fixation of share should depend upon the order, passed by the Board proceedings as per the power u/s 20 of the Act. Both the Courts below have elaborately considered all these facts, and recorded the findings that the plaintiffs have not established the plea of custom and usage, though no declaration is sought for this right, dismissed the suit, which is in my opinion is in accordance with law.

19. The submission of the learned counsel for the respondent Mr. Srinath Sridevan, that the suit for declaration of the plaintiffs" alleged right in respect of sharing in the fees levied by the defendant/Temple alone is, not-maintainable, without declaration of their right, as hereditary Archakas and Pooja Sthanikamadaras of the defendant Temple, appears to be legally sound, and well founded. In this context, we have to see the previous proceedings, initiated by the plaintiffs or their predecessors interest as the case may be. It is an admitted position, that the plaintiffs have filed a suit in O.S.No. 21 of 1970 on the file of Sub-Court, Karaikal, against the defendant Temple, for a declaration of their hereditary right of Archakas, and Pooja Sthanikamadars and for a declaration that the order of the Board of Trustee dated 6.3.1970 was illegal and null and void, with consequential relief of permanent injunction. That suit was dismissed,

on the ground that the right claimed by the plaintiffs, cannot be decided by the said Court, as provided under Article 2 of arriete of 1918, as per which cases of this nature could be filed only before the justice of peace, which is the District Munsiff Court, Karaikkal, not on merit. In this view alone, both the Courts have held that this suit is not barred by the principal res judicata, which is not under challenge.

20. But, the fact remains that the right of the plaintiffs, namely, their claim for hereditary archakas post, that their claim for hereditary right for payment, were in dispute and that is why, they have filed the suit also. In this suit, the plaintiffs have not claimed, for the declaration of their hereditary right, if any. The declaration sought for in this suit is for half share of the net income. As per the pleadings, this right mainly depends upon the right claimed by the plaintiffs, on the basis of the hereditary rights, which is based upon custom and usage. Therefore, unless that right is declared, more or less, the right now claimed, appears to be a consequential one, cannot be decided and in this view alone, it is submitted, that the suit is not maintainable, seeking aid from the decision of this Court, in Sri Rajah Nayani Venkata Ranga Rao Bahadur Zamindar Garu v. Sri Rajah Tadakamalla Sita Ramachandra Rao Bahadur Zamindar Garu, A.I.R.1941 Mad. 91, wherein this Court has held that it is incumbent upon the plaintiff to pray for a declaration, which will have the effect of removing that obstacle, namely in this case declaration for hereditary right. It is observed in the above decision that;

"....

If therefore there is any legal necessity for the plaintiff to get a declaration of his right of easement before he can get an injunction to protect it, the suit would have to be filed u/s 7(iv)(c). Court-Fees Act, even though he has sought this declaration by means of averments in the body of the plaint. On this part of the case the safe rule is that when there is some legal obstacle which has to be removed before a consequential relief can be granted, it is incumbent upon the plaintiff to pray for a declaration which will have the effect of removing that obstacle."

Though the case involved in the above decision, relates to easementary right, the principle is one and the same. Under the facts and circumstances of the case, unless the right on which basis, share is claimed, is established and declared, the plaintiffs are not entitled to maintain the present suit, which appears to be the consequential relief. Therefore, the suit filed, as such, is not maintainable and on this basis also, the plaintiffs, should be non-suited as rightly did by the Courts below.

21. For the foregoing reasons, concluding that the plaintiffs are not entitled to the benefits of exclusion u/s 30 of the Pondicherry Hindu Religious Institutions Act, 1972, which is not established, the substantial question of law is answered, accordingly, holding the appeal deserves to be dismissed, as devoid of merits.

22. In the result, the Second Appeal is dismissed, as devoid of merits, but, considering the facts and circumstances of the case, directing the parties to bear the respective costs through out.